IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

GREGORY L. BURDESS, **and LISA BURDESS,** **Plaintiffs,** **v.** **COTTRELL, INC.,** **Defendant.**	))))))))))	**Case No.:**

COMPLAINT

NOTE: All Allegations lodged require a response. Claiming an allegation is a statement of law to which no response is required will not be accepted as a proper response.

COUNT I

COMES NOW the plaintiff, Gregory L. Burdess, by and through his undersigned attorneys and in support of his cause of action against Cottrell, Inc., ("Cottrell") states as follows:

1. That plaintiff, is a citizen and resident of the State of Missouri, and was at all times relevant hereto an employee of Jack Cooper Transport Company ("JCT") a registered motor carrier that regularly transports materials and makes deliveries in this venue. Plaintiff's injuries arose from said business.

2. That the defendant, Cottrell is a corporation organized and existing under the laws of the State of Georgia with its principal place of business located in the City of Gainesville, Georgia and doing business in the State of Missouri.

3. That the rigs in the JCT motor carrier fleet, including the rig in question here, are manufactured, designed and placed into the stream of commerce by sale or otherwise by Cottrell for use in Missouri as well as other states.

4. That on or about April 26, 2013 and prior thereto, plaintiff, Gregory Burdess, was performing his normal work duties as a car hauler for his employer in Missouri. At those times, plaintiff was operating rigs manufactured by the defendant, Cottrell, Inc. Pursuant to his duties, plaintiff was injured while securing automobiles, during the operation of the ratchet tie down systems he had been using in intended or foreseeable fashions. The defendant, Cottrell, Inc., is believed to have designed, distributed and/or is the successor to the design of the rigs. The injury date above is the date of diagnosis of bilateral shoulder impingement syndrome. The condition is caused by specific and repetitive trauma.

5. The rigs were operated, distributed, leased, and placed into the stream of commerce by Defendant Cottrell, which profited from the sale of the rigs. Defendant was in a position to make the rigs safe.

6. That at all times relevant herein, the aforesaid rigs were in substantially the same condition as when they left the control of the defendant. Any modifications were foreseeable or expected by defendant. Defendant Cottrell regularly refurbishes JCT rigs and may have refurbished the rigs in question.

7. That the defendant Cottrell placed the aforesaid rigs into the stream of commerce as part of its regular business activity for profit or other benefits for ultimate use in this State.

8. That at the time of its manufacture and at all times mentioned herein, the aforementioned rigs were defective and not reasonably safe in one or more of the following respects, to-wit:

(a) the rigs lacked reasonably safe vehicle securement systems;

(b) the rigs were supplied with idlers, hooks and ratchet systems incapable of preventing chain slippage and/or snagging inherent in the foreseeable use of the rigs;

(c) the rigs lacked adequate warnings to sufficiently warn plaintiff and others similarly situated that the ratchets, hooks, idlers and chains supplied with the rig would subject users to an unreasonable risk of injury during reasonably foreseeable use and/or expected use of the rigs;

(d) the rigs lacked adequate warnings to sufficiently warn plaintiff and others similarly situated of one or more of the defects herein;

(e) the rigs were not accompanied by a non-manual vehicle securement system, reduced gear ratchet, cables, straps, enclosed idlers, wheel chocks or wheel clamps;

(f) the rigs were equipped with vehicle securement systems unreasonably prone to breakage and sudden releases, and/or which required excessive force to operate and to compress vehicle suspensions to load;

(g) the rigs were not properly designed or manufactured so that the vehicular securement systems would not cause wear and tear/repetitive trauma injuries to users.

9. That as a direct and proximate result of the aforesaid, plaintiff, while attempting to perform his normal work activities in an intended and/or foreseeable fashion by operating the vehicle securement systems and using the normal procedures by which he was trained, sustained severe and permanent injuries to his upper extremities and related areas while exerting required and/or foreseeable force and pressure on the chained ratchet tie down system. Plaintiff's injuries are due to repetitive trauma from the use of Cottrell rigs, all of which have the same ratchet system defective design. Plaintiff has suffered and will continue to suffer pain and mental anguish; plaintiff's injuries are disfiguring and are permanent in nature; plaintiff has been required to expend large sums of money in order to obtain medical treatment for his injuries and will be required to expend additional sums in the future; plaintiff has sustained wage loss and has been damaged in his capacity to earn wages in the future; plaintiff's condition is such that he may be forced to expend sums of money for vocational rehabilitation and/or convalescent care. Based on the above, plaintiff requests damages, which will fairly and reasonably compensate the plaintiff

for his injuries suffered and damages incurred. To the extent Defendant claims other trailer/rig conditions contributed to Plaintiff's injuries such were also attributable to Cottrell's designs.

WHEREFORE, plaintiff prays for a judgment against defendant Cottrell for a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00), for costs of this suit, and such other, further, and different relief as is appropriate under the law.

PLAINTIFFS PRAY FOR TRIAL BY JURY.

COUNT II

COMES NOW, the plaintiff, Gregory Burdess, by and through his undersigned attorneys and in support of his cause of action against Cottrell, Inc., states as follows:

1-7. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-7 of Count I as Paragraphs 1-7 of this Count.

8. That based upon the foregoing, defendant owed a duty to plaintiff and others similarly situated to design, lease, distribute, supply, test and manufacture rigs with due care for the safety of plaintiff and others similarly situated.

9. That in violation of the aforesaid duty, defendant, committed one or more of the following negligent acts or omissions, to-wit:

(a) failed to review and analyze available injury and testing data available to defendants and the industry;

(b) failed to adequately test the rigs to ascertain whether the vehicle securement systems, hooks and idlers on the rig were reasonably safe for use during the foreseeable and/or intended use of the rigs;

(c) failed to modify the design when defendant knew or should have known that the ratchets were causing excessive numbers of injuries to users and/or required excessive force to operate;

(d) failed to supply adequate warnings to sufficiently warn plaintiff and others similarly situated of the dangers, hazards and defects herein;

(e) failed to supply the rigs with alternative vehicle securement systems including hydraulic, straps, gear reduction, enclosed idlers, wheel clamps, electric or pneumatics;

(f) failed to test, or allow for the use of alternative securement systems including but not limited to non-manual systems and straps;

(g) failed to approve and/or seek approval for use alternative vehicle securement systems;

(h) failed to supply the rigs with a non-manual system, which would allow plaintiff to perform the tie-down operation in a safe manner;

(i) failed to inspect and/or test the rigs when defendant knew or should have known improperly designed vehicle securement systems would likely lead to injury to users;

(j) failed to access or share industry reports and injury data; and /or

(k) destroyed or allowed for the destruction of injury data and/or industry reports and patents;

10. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 9 of Count I as Paragraph 10 of this Count.

WHEREFORE, plaintiff prays for a judgment against defendant Cottrell for a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00), for costs of this suit, and such other, further, and different relief as is appropriate.

PLAINTIFFS PRAY FOR TRIAL BY JURY.

COUNT III

COMES NOW, the plaintiff, Gregory Burdess, by and through his undersigned attorneys, and in support of his cause of action against Cottrell, Inc., states as follows:

1-7. Plaintiff repeats, realleges and incorporates herein by reference Paragraphs 1-7 of Count I as Paragraphs 1-7 of this Count.

8. That at all times relevant hereto, the defendant impliedly warranted that the rigs in

question were reasonably safe for their intended and/or foreseeable uses.

9. That in breach of the aforesaid implied warranty, defendant placed into the stream of commerce rigs which contained one or more of the following unreasonably dangerous conditions, to-wit:

(a) the rigs lacked reasonably safe vehicle securement systems;

(b) the rigs were supplied with idlers, hooks and ratchet systems incapable of preventing chain slippage and/or snagging inherent in the foreseeable use of the rigs;

(c) the rigs lacked adequate warnings to sufficiently warn plaintiff and others similarly situated that the ratchets, hooks, idlers and chains supplied with the rig would subject users to an unreasonable risk of injury during reasonably foreseeable use and/or expected use of the rigs;

(d) the rigs lacked adequate warnings to sufficiently warn plaintiff and others similarly situated of one or more of the defects herein;

(e) the rigs were not accompanied by a non-manual vehicle securement system, reduced gear ratchet, cables, straps, enclosed idlers, wheel chocks or wheel clamps;

(f) the rigs were equipped with vehicle securement systems unreasonably prone to breakage and sudden releases, and/or which required excessive force to operate and to compress vehicle suspensions to load;

(g) the rigs were not properly designed or manufactured so that the vehicular securement systems would not cause wear and tear/repetitive trauma injuries to users.

10. Plaintiff repeats, realleges and incorporates herein by reference Paragraph 9 of Count I as Paragraph 10 of this Count.

WHEREFORE, plaintiff prays for a judgment against defendant Cottrell for a sum in excess of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00), for costs of this suit, and such other, further, and different relief as is appropriate.

PLAINTIFFS PRAY FOR TRIAL BY JURY.

COUNT IV

COMES NOW, the plaintiff, Lisa Burdess, by and through her undersigned attorneys, and in support of her cause of action against Cottrell Inc., state as follows:

1. Plaintiff repeats all allegations of all prior Counts.

2. That at all times relevant hereto the plaintiff, Lisa Burdess, was and continues to be the spouse of the plaintiff, Gregory L. Burdess. In that capacity, Lisa Burdess has been and continues to be dependent upon Gregory L. Burdess for her support and services.

3. That based upon the above, the plaintiff, Lisa Burdess, has been deprived of the support and services of her husband and has been unjustly exposed to the potential for financial ruin, and as a proximate cause thereof, has been damaged in an amount in excess of $75,000.00.

WHEREFORE, plaintiff prays for judgments against defendant for a sum in excess Seventy-Five Thousand Dollars ($75,000.00), plus costs of suit, and such other, further, and different relief as is appropriate.

PLAINTIFFS PRAY FOR TRIAL BY JURY.

COUNT V

COMES NOW, plaintiff, Gregory L. Burdess, by and through his undersigned attorneys, and in support of his cause of action against defendant, Cottrell, states as follows:

1. Plaintiff repeats, realleges and incorporates herein by reference all Paragraphs of Counts I, II, and III.

2. That at all times relevant hereto, the above identified defendant engaged in behavior with respect to the product in question as enumerated as follows:

(a) placed profits above safety by persistently refusing to read, consider, share, disseminate and/or acknowledge the existence of safety data, ergonomic engineer reports, published engineer reports and other safety reports specifically and expressly critical of the design identical to or substantially similar to the design in issue;

(b) failing to share, disseminate, seek out, review or acknowledge the existence of hundreds of reports of injuries associated with persons using the design identical to or substantially similar to that in issue;

(c) consistently and persistently sought to increase the hauling capacity and trailer payload of vehicles when defendant knew with every increase in trailer payload drivers such as the plaintiff was being subjected to an increase in the risk of substantial injuries;

(d) created and promoted a “competitive advantage for Cottrell trailers by the use of increased carrying capacity with the dangers described above and the reports and records described above all known to be existence;

(e) placed profits above safety engaging in a series of willful and outrageous withholding of injury data. Said withholding by defendant was designed and/or utilized to enable the officers and directors of the Defendant to utilize “corporate knowledge” to exclude knowledge possessed by the officers and directors of the corporation and knowledge possessed and/or available to individual shareholders who individually profited from the sale of the trailer while simultaneously claiming the corporation was unaware of the knowledge of both the shareholders and the officers/directors;

(f) retained the services of experts to review design safety features of trailers such as that in issue. Upon receipt of reports of these experts the defendant either concealed or withheld such reports from the public and from users such as the plaintiff. Defendant, in addition, sought out experts known to be biased such that they were likely to write favorable reports which were baseless in fact and/or law. Even when one or more of such experts drafted unfavorable reports the defendant withheld such reports from persons like plaintiff as well as from the public;

(g) drafted or supplied owner’s manuals with precautionary instructions and safety directives which were created to serve as litigation defense tools when the meanings of the terminology in said manuals were unknown to persons who drafted the manuals;

(h) ignored and failed to consider the use of alternative safer designs including designs used by its competitors and/or used in other countries as safer alternatives. Defendant professed ignorance of such designs when, in fact, the designs were known to be functional, feasible and within the knowledge of the shareholders, mangers, officers and directors of the defendant;

(i) destroyed, altered and denied knowing about evidence of injury hazards, high force levels associated with ratchet and chain use and injury records including records from other lawsuits and industry reports.

3. That the defendant engaged in the above behavior in a clear quest to continue to treat injuries associated with the rigs such as at issue as a minor business expense despite recommendations and urging from others that such behavior must cease. Records with such recommendations and urgings were removed and/or deleted from defendant's records along with many other records including records of engineers, ergonomic safety experts and others as described above all so that the defendant could continue to place known dangerous and defectively designed equipment into the stream of commerce so that defendant could continue to reap profits from the use of such products while simultaneously disregarding and continuing to treat injuries as minor business expenses.

WHEREFORE, the plaintiff prays for a Judgment in his favor against defendant for an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) in compensatory damages and for an amount in excess of SEVENTY-FIVE THOUSAND DOLLARS ($75,000.00) in exemplary or aggravated damages and for such other and further relief as deemed just.

PLAINTIFFS PRAY FOR TRIAL BY JURY.

Respectfully Submitted,

WENDLER LAW, P.C.

By: ***/s/ Brian M. Wendler***

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